

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

SPENCER HARRIS,

Plaintiff,

v.

CHARLES HOLMES; JOHN DOE 1-3;
CJ ALEXANDER TRUCKING, LLC, TRISURA SPECIALTY
INSURANCE COMPANY, and
ABC CORPORATION 1-3,

Defendants.

CIVIL ACTION

FILE: _____

Removed from the State Court of
Fulton County, Civil Action No.
23EV003129

JURY TRIAL DEMANDED

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendants C J Alexander Trucking LLC and Trisura Specialty Insurance Company (hereinafter collectively as “Defendants”), hereby give notice of the removal of this civil action from the State Court of Fulton County, Georgia, to the United States District Court for the Northern District of Georgia, Atlanta Division.¹ As grounds for this removal, Defendants show this Honorable Court as follows:

¹ As of the filing of this Notice of Removal, Defendant Charles Holmes has not been served with process. *See* Court Docket, attached hereto as **Exhibit A**, and Affidavit of Non-Service of Charles Holmes, attached hereto as **Exhibit B**.

1. This civil action was commenced on or about May 24, 2023, by the filing of a Complaint in the State Court of Fulton County, Georgia, a copy of which is attached as **Exhibit C**. Plaintiff filed the Summons the following day.

2. Trisura Specialty Insurance Company was served with a Summons and Complaint on June 7, 2023. *See* Affidavit of Service of Trisura Specialty Insurance Company, attached as **Exhibit D**.

3. Trisura Specialty Insurance Company filed its Answer to Plaintiffs' Complaint on July 21, 2023. *See* Trisura Specialty Insurance Company's Answer to Plaintiff's Complaint for Damages, attached as **Exhibit E**. On July 31, 2023, C J Alexander Trucking LLC filed its Special Appearance and Answer to Plaintiff's Complaint for Damages. *See* C J Alexander Trucking LLC's Special Appearance and Answer to Plaintiff's Complaint for Damages, attached as **Exhibit F**.

4. As of the filing of this Notice of Removal, Charles Holmes has not been served with process. *See* Court Docket, attached hereto as **Exhibit A**, and Affidavit of Non-Service of Charles Holmes, attached hereto as **Exhibit B**.

5. Plaintiff alleges that he suffered injuries as a result of Defendants' negligence related to a motor vehicle accident on or about August 30, 2021. *See* Complaint at ¶¶ 8-25.

6. Plaintiff's Complaint alleges that the accident was caused by Charles Holmes through his negligent operation of a tractor-trailer resulting in the subject accident and Plaintiff's alleged injuries and damages. Complaint at ¶¶ 12-16, 27-32. Plaintiff further alleges as a result of Charles Holmes' negligence, Plaintiff suffered serious, permanent and painful injuries to his body. Complaint at ¶ 30.

7. Plaintiff's Complaint alleges that C J Alexander Trucking LLC, as Mr. Holmes' employer, is liable for Mr. Holmes' negligence under the doctrine of lease liability, agency, or apparent agency. Complaint at ¶¶ 18-20.

8. Plaintiff asserts a direct action against Trisura Specialty Insurance Company as the insurer of C J Alexander Trucking LLC during the subject motor vehicle accident that gives rise to Plaintiff's Complaint pursuant to O.C.G.A. § 40-2-140. Complaint at ¶¶ 22-25. Plaintiff further alleges that Trisura Specialty Insurance Company is responsible for any judgment rendered against Defendants C J Alexander Trucking LLC and/or Charles Holmes up to the maximum liability limits in the applicable policy. Complaint at ¶ 25.

9. Prior to August 21, 2023, the amount in controversy was unclear based on the allegations in Plaintiff's Complaint. *See generally*, Plaintiff's Complaint for Damages. Defendant Trisura Specialty Insurance Company first became aware that the amount in controversy in this matter exceeded the statutory minimum upon the

receipt of Plaintiff's discovery responses on August 21, 2023. *See* Plaintiff's Discovery Responses to Trisura Specialty Insurance Company, Responses to Requests for Admissions at ¶ 25 (.pdf p.25), attached hereto as **Exhibit G**. For the purposes of 28 U.S.C. § 1332(a), 28 U.S.C. § 1446(b)(3), and 28 U.S.C. § 1446(c)(3)(A), Plaintiff responded,

25.

Please admit that the amount in controversy in this lawsuit exceeds \$75,000.00.

Response: Admitted.

Plaintiff's Discovery Responses to Trisura Specialty Insurance Company, Responses to Requests for Admissions at ¶ 25 (.pdf p.25)

Moreover, there is no evidence showing to a legal certainty that the amount in controversy has not been met. *See St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289, 58 S. Ct. 586, 590 (1938) (“[i]t must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal.”).

10. Plaintiff is now, and at the commencement of this action, a citizen of the State of Georgia. *See* Plaintiff's Discovery Responses to Trisura Specialty Insurance Company, Responses to Interrogatories at ¶ 1 (.pdf p.2); Police Report at p. 2, attached as **Exhibit H**.

11. C J Alexander Trucking LLC is now, and was at the commencement of this action, and at all intervening times, a corporation organized under the laws

of the State of Florida with its principal place of business in the State of Florida. It is therefore a citizen of the State of Florida for purposes of diversity jurisdiction. *See* Complaint at ¶ 3, Police Report, and the Florida Department of State, Division of Corporations entry for C J Alexander Trucking LLC, <https://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=CJALEXANDERTRUCKING%20L200001775270&aggregateId=flal-l20000177527-5636064d-cd99-41eb-bc4d-33df5c1de34b&searchTerm=cj%20alexander%20trucking&listNameOrder=CJALEXANDERTRUCKING%20L200001775270>.

12. Trisura Specialty Insurance Company is now, and was at the commencement of this action, and at all intervening times, a corporation organized under the laws of the State of Oklahoma with its principal place of business in the State of Oklahoma. It is therefore a citizen of the State of Oklahoma for purposes of diversity jurisdiction. *See* the Oklahoma Secretary of State entry for Trisura Specialty Insurance Company, <https://www.sos.ok.gov/corp/corpInformation.aspx?id=3112619600>.

13. According to Plaintiff and the police report, Charles Holmes is a Florida resident. *See* Complaint at ¶ 2, and Police Report.²

14. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is promptly being filed with the Clerk of the State Court of Fulton County, Georgia, and served on counsel for Plaintiff and on all other parties to this civil action. Defendant also attaches hereto copies of all process, pleadings, orders and related filings in the State Court of Fulton County pertaining to this case as **Exhibits A – R**.

Respectfully submitted this 12th day of September, 2023.

NALL & MILLER, LLP

By: /s/ Alain P. Fernandez
AMANDA MATTHEWS
Georgia Bar No. 474951
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ATTORNEYS FOR DEFENDANTS
TRISURA SPECIALTY INSURANCE
COMPANY & C J ALEXANDER
TRUCKING LLC

² As mentioned in the preceding paragraphs, as of the filing of this Notice of Removal, Defendant Charles Holmes has not been served with process in the instant lawsuit. However, Mr. Holmes' last known state of residence is included in this discussion to clarify any potential diversity issues.

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CERTIFICATE OF COMPLIANCE WITH N.D. GA. LOCAL RULE 5.1B

This is to certify that this pleading was created in Times New Roman 14-point font in accordance with Northern District of Georgia Local Rule 5.1B.

This 12th day of September, 2023.

NALL & MILLER, LLP

By: /s/ Alain P. Fernandez
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing **NOTICE OF REMOVAL** with the Clerk of Court via the Court's electronic filing system, and via electronic mail to counsel of record listed below.

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This 12th day of September, 2023.

NALL & MILLER, LLP

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